

The petition for a writ of certiorari should be granted.
Respectfully submitted,

THOMAS N. GRIFFIN,
Solicitor General.

PETER G. NASH,
General Counsel,
Norton J. Come,
Assistant General Counsel,
William M. Davison,
Deputy Assistant General Counsel,
Stanley R. Zimrin,
Attorney at Law,
National Labor Relations Board.
November 1971.

Enclosed for the National Labor Relations Board are two copies of a letterhead memorandum dated and captioned as above. The memorandum contains a summary of the facts and issues presented by the petition for a writ of certiorari filed in the United States Supreme Court on October 15, 1971. The memorandum also contains a summary of the Board's decision in the matter, dated and captioned as above, and a summary of the Board's reasoning therefor. The Board's decision is based on the fact that the petition for a writ of certiorari was filed after the Board's decision in the matter, and therefore, the Board's decision is final and unreviewable. The Board's reasoning is based on the fact that the petition for a writ of certiorari was filed after the Board's decision in the matter, and therefore, the Board's decision is final and unreviewable.

APPENDIX A

In the United States Court of Appeals

for the First Circuit

No. 71-1063

NATIONAL LABOR RELATIONS BOARD, PETITIONER

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION OF AMERICA, LOCAL 1029, AFL-CIO, RESPONDENT

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before ALDRICH, Chief Judge,
McENTEE and COFFIN, Circuit Judges.

June 29, 1971.

McENTEE, Circuit Judge. This case comes to us on application for enforcement of a Labor Board order against respondent, Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO (the union). The Board found that the union committed a § 8(b)(1)(A) unfair labor practice¹

¹ Section 8(b) provides in relevant part:

"It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of

when it sought judicial enforcement of fines against thirty-one union members who, during the course of a lawful, union-authorized strike, resigned from the union and crossed the picket line to return to work.

The union represents the production and maintenance employees of the International Paper Box Machine Company in Nashua, New Hampshire. The collective bargaining agreement which was in effect between September 20, 1965, and September 20, 1968, included a "maintenance of membership clause," which provided that all employees who belonged to the union on September 20, 1965, or joined during the contract period would remain members in good standing for the duration of the contract. Each employee applying for union membership was required to sign a "dues check-off" authorization form. This form expressly made the check-off authorization irrevocable except during specified annual ten-day periods.

Shortly before the expiration of the collective bargaining agreement, while negotiations were still in progress, the union membership voted to strike if no agreement was reached by September 20. The trial examined the rights guaranteed in section 7 of this title: *Provided*, That this paragraph shall not impair the right of the labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;...."

Section 7 provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) of this title." (Emphasis added.)

aminer found that "[p]ractically all the members" attended the strike vote meeting and only one member dissented from the decision to strike. A day or two after the strike began the union membership voted unanimously to levy a \$2,000 fine on anyone aiding or abetting the company during the strike.

On November 5 and 25, 1968, respectively, employees Radziewicz and Kimball sent letters of resignation to the union. In both instances the union refused to accept the tendered resignations and warned the employees about the \$2,000 fine. Radziewicz returned to work secretly for a few days before Thanksgiving but stopped working after receiving a second warning about the fine. The two employees then filed unfair labor practice charges against the union on the ground that the threats of fines violated § 8(b) (1) (A). The trial examiner ruled that no unfair labor practice had been committed. He added, however, that in his opinion, although *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), established a union's right to obtain judicial enforcement of fines levied against members who cross a picket line, Radziewicz and Kimball could not be fined under *Allis-Chalmers* because they had effectively resigned from union membership. The company thereupon informed all striking employees about the trial examiner's decision. The union, in turn, wrote to each member that

This finding suggests that most of the employees who subsequently resigned and returned to work had probably voted in favor of the strike and very likely for the fines as well. The Board conceded at oral argument that all thirty-one had voted to strike. The only direct evidence on the record before us is the testimony of Maurice Kimball II, who was the second employee to resign. He testified that he had voted for the strike and that he was present at the meeting when the fine was voted, and did not oppose it.

the company's information was erroneous and that the union's right to fine strikebreakers has been upheld by the Supreme Court. During the months that followed, twenty-nine additional employees resigned from the union and returned to work.

Each of the thirty-one employees who returned to work was tried at a union hearing and fined an amount equal to a day's pay for each day worked during the strike. All received notices regarding their hearings, but none attended and none paid the fine. The union then commenced actions to collect the fines in the New Hampshire state courts. While these actions were pending, the instant unfair labor practice charges were filed. In conformance with his earlier opinion, the trial examiner ruled that, because these employees had effectively resigned from the union before crossing the picket line, the union fines and attempted judicial enforcement violated their §7 right to refrain from striking and constituted a §8(b)(1)(A) unfair labor practice. The Board affirmed his rulings, relying on its more extensive opinion in *Booster Lodge No. 405, IAM*, 185 N.L.R.B. No. 23 (1970) (*Boeing*), review pending, No. 24,687 (D.C. Cir.), which it had recently issued. *Boeing* and the instant case are the only two in which the Board has ruled on this question and

*As the trial examiner noted, *Allis-Chalmers, supra*, does not make clear whether an unreasonably severe union fine would constitute a §8(b)(1)(A) unfair labor practice. Since the Board's ruling below is not predicated on reasonableness, we need not reach that issue here.

*The trial examiner also ruled that state court suits brought by the union to recover money advanced to these employees during the strike did not violate §8(b)(1)(A). In many instances the union had paid premiums to keep employees' group life insurance policies current during the strike, and some had received direct cash payments from the union.

this is therefore a case of first impression before this court.

In its brief, the union takes the position that these thirty-one employees have never effectively resigned. First, it argues that questions of "acquisition and retention of membership" are internal union matters and therefore beyond the province of the Board, citing the proviso in § 8(b)(1)(A), note 1 *supra*, and *UAW, Local 283*, 145 N.L.R.B. 1097 (1964) (*Wisconsin Motor Corp.*), review denied sub nom. *Scofield v. NLRB*, 393 F. 2d 49 (7th Cir. 1968), *aff'd*, 394 U.S. 423 (1969). But the general principle that the union-employee relationship is a "federally unentered enclave" does not apply where a union "rule or its enforcement impinges on some policy of the federal labor law." *Scofield, supra*, 394 U.S. at 426 n.3. Since § 8(b)(1)(A) makes certain actions taken by unions *vis-a-vis* their employees unfair labor practices, it is within the province of the Labor Board and the federal courts to determine when that provision has been violated.

The union concedes that its constitution and by-laws contain no express provision limiting members' rights to resign. Absent an express provision to the contrary, the courts have interpreted union constitutions to allow voluntary resignations at any time. *NLRB v. Mechanical and Allied Production Workers, Local 444*, 427 F. 2d 883 (1st Cir. 1970); *Communication Workers v. NLRB*, 215 F. 2d 835, 838-39 (2d Cir. 1954); *cf. NLRB v. International Union, UAW*, 320 F. 2d 12 (1st Cir. 1963) (*Paulding*). Similarly, since the collective bargaining agreement had expired, the "retention of membership" provision was no longer in effect during the strike. The union argues that its established practice was to accept resignations only during the annual ten-day "escape period" during

which employees were allowed to revoke their "dues check-off" authorizations. But, as the trial examiner pointed out, there was no evidence that the employees knew of this practice or that they had consented to this limitation on their right to resign.

The union contends that, even if the resignations effectively severed ties with the union for most purposes, the September 1968 strike vote bound these thirty-one employees to support this particular strike until its conclusion. An analogy is drawn to the "charitable subscription" cases where some courts have held that a promise by A to donate funds to a charity is binding on A if others have made similar promises in reliance on his promise. *E.g.*, *Young Men's Christian Association v. Estill*, 140 Ga. 291, 78 S.E. 1075 (1913). See 1A A. Corbin, Contracts § 198, at 216 (1963). As Corbin points out, the "mutual subscriptions" argument is particularly compelling in a business context where donative intent is presumably absent. *Id.* at 212; see *Martin v. Meles*, 179 Mass. 114, 60 N.E. 397 (1901) (Holmes, C.J.). We can imagine a case involving three hypothetical employees whom we shall call Jones, Smith and Parks. Initially, Jones is anxious to strike but Smith and Parks hesitate, finally acquiescing on the condition that all agree to stick it out for the duration of the strike. We suggest

Under this theory, the *Boeing* case, *supra*, may be distinguishable on its facts since in *Boeing* the fines were authorized by a general provision in a union constitution, rather than by a specific decision of the membership adopted in the context of a particular strike. In *Boeing* the Board emphasized that "the Union had not warned members about the possible imposition of disciplinary measures." Also, the *Boeing* opinion did not consider whether any of the employees who crossed the picket line had originally voted to support the strike. We express no opinion, however, as to whether these distinctions are determinative.

that this kind of mutual reliance is implicit in all strike votes; many employees would hesitate to forego several weeks or months of pay if they knew their co-workers were free to cross the picket line at any time merely by resigning from the union. An alternative theory, also suggested by the subscription cases, is that the union can enforce an employee's agreement to strike since it has embarked on the strike in reliance on his promise to honor it.

In response, the Board concedes that the mutual subscription argument would be conclusive but for § 7 of the Act. See note 1 *supra*. Section 7, which was originally designed to assure employees the right to organize, bargain collectively, and engage in concerted activities, was amended by the Taft-Hartley Act in 1947 to give employees the added right "to refrain from any or all of such activities. . . ." We are not persuaded, however, that the amendment to § 7 was intended to authorize mid-strike resignations. The plain meaning of the word "refrain" is "to keep oneself from doing, feeling, or indulging in something." It is synonymous with "abstain" and "forbear." Webster's Seventh New Collegiate Dictionary 220 (1967). This definition suggests that, although § 7 gives an employee the right to refuse to undertake and involve himself in union activities, it does not necessarily give him the right to abandon these activities in midcourse once he has undertaken them voluntarily. There is little legislative history regarding the amendment to § 7, but the conference committee re-

It could be argued that the union's reliance on the "subscription cases" is inconsistent with its concession at oral argument that a majority vote of the membership could terminate the strike at any time. But it would seem to have been implicit in the original strike vote that the obligation to strike would terminate once the majority voted to return to work.

port supports our interpretation. It states that the amendment provides that employees are also to have the right to refrain from joining in concerted activities with their fellow employees if they choose to do so. H. R. Rep. No. 510, 80th Cong., 1st Sess.; 1947 U.S. Code Cong. Service, p. 1145. (Emphasis added.)

The union argues that the employee who agrees to strike should be likened to a volunteer for military service who, once he has enlisted, is no longer free to resign from his obligations and duties in midpassage. This approach receives strong support from *Allis-Chalmers*, *supra*, where the Court said:

Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement under its terms, and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent *Supra*, 368 U.S. at 181. (Emphasis added; footnotes omitted.)

The Board asserts that, in essence, this case presents a conflict between the policies set forth in *Allis-Chalmers* and those incorporated in the amended § 7. The Board takes the position that, where such a conflict exists, § 7 must prevail. But the policy of allowing unions to maintain strike discipline can be reconciled with the policy of allowing employees to refrain from concerted activities if the Act is interpreted to permit the waiver of § 7 rights by employees. Under this interpretation, employees who agreed to undertake specific union activities and obligations would be

held to have waived their § 7 rights to refrain from those activities.' As noted, both the plain meaning and the legislative history of the amendment to § 7 support this interpretation.

We find further support for our decision not to enforce the Board's order in this case in the reasoning in *Allis-Chalmers, supra*. In that case the Court never reached the question of the proper interpretation of § 7, because it held that § 8(b)(1)(A) simply does not apply to judicial enforcement of union strikebreaking fines. The Court emphasized that Taft-Hartley was enacted in a context in which the union-member relationship was considered a matter of private contract, governed by state law. *Id.*, 388 U.S. at 182-83. It stated that § 8(b)(1)(A) was intended to affect that relationship in only three areas: (1) coercion and threats of reprisal in the course of organizational campaigns, *id.* at 186-88; (2) arbitrary actions by union leaders, *id.* at 188-89; and (3) "coercion which prevented employees not involved in a labor dispute from going to work," *id.* at 189. There is no evidence in the legislative history of any intent that § 8(b)(1)(A) apply to union-employee agreements and obligations that have been undertaken voluntarily and without coercion.

¹ As the dissent noted in *Allis-Chalmers*, there is some suggestion in the Court's opinion in that case that "by joining a union an employee gives up or waives some of his § 7 rights." *Supra*, 388 U.S. at 200 (Black, J., dissenting). In the *Boeing* opinion, the Board said that, when an employee joins a union, "[w]ithout waiving his Section 7 right to refrain from concerted activities, he consents to the possible imposition of union discipline upon his exercise of that right." That proposition strikes us as "doublethink." Consent to imposition of a sanction is obviously equivalent to the waiver of a right. We therefore conclude that § 7 rights can be and are waived by employees in many situations.

In *Boeing* the Board took the position that *Allis-Chalmers* has been limited by *NLRB v. Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418 (1968), and *Scofield v. NLRB*, *supra*, 394 U.S. 423. *Scofield* held that a union rule is valid unless that "rule invades or frustrates an overriding policy of the labor laws." *Id.*, 394 U.S. at 429. Since we have found a valid waiver of § 7 by these employees,^{*} we conclude that no federal labor policy would be overridden by judicial enforcement of union fines in the context of this case. The Board relies on dictum in *Scofield* to the effect that

§ 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." *Id.*, 394 U.S. at 430.

We do not understand this language to mean that union members must be "free to leave the union and escape the rule" at any time and under all circumstances. Indeed, we do not see how that interpretation could be correct since in *Scofield* itself the Court recognized that a valid union security clause was in effect at the time of the alleged unfair labor practice. *Id.*, 394 U.S. at 424 n. 1. The extent to which and the

^{*} Since the record is somewhat equivocal on this point, *cf.* note 2 *supra*, it is conceivable that one or more employees will yet come to the Board with the claim that they did not attend either of the two strike vote meetings. We do not reach the question of whether employees in that position were free to abandon the strike at any time, whether their failure to resign at the beginning of the strike constituted ratification of the strike vote on their part, or whether their voluntary act in joining the union constituted such a "contract" as to bar such a claim.

conditions under which union members must be free to resign has not been definitely resolved by the Court. In light of our analysis of the specific obligation to strike undertaken in this case, it is an issue we need not reach here.

The petition for enforcement is denied.

APPENDIX B
In the United States Court of Appeals for the First
Circuit

No. 71-1063

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO RESPONDENT

DECREE

Entered June 29, 1971

This cause came on to be heard upon petition for enforcement of an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The petition for enforcement is denied.

By the Court:

/s/ **DANA H. GALLUP,**

Clerk.

A True Copy

ATTEST:

DANA H. GALLUP, Clerk.

[Cert. cc: N.L.R.B.; cc: Messrs. Mallet-Prevost and Roitman and Mr. Fuchs.]

APPENDIX C

United States of America—Before the National Labor Relations Board

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION OF AMERICA, LOCAL 1029, AFL-CIO¹ (INTERNATIONAL PAPER BOX MACHINE COMPANY)

and

**FELIX RADZIEWICZ, MAURICE K. KIMBALL, II,
INDIVIDUALS**

Case 1-CB-1460 (1-2)

and

**PAUL R. MARQUIS, EUGENE COLLARD, HAZEN R.
JOHNSON, PETER MAKIS, SR., INDIVIDUALS**

Case 1-CB-1504 (1-4)

and

JOSEPH M. KERRIGAN, ESQ., AN INDIVIDUAL

Case 1-CB-1534

DECISION AND ORDER

On June 4, 1969, Trial Examiner Milton Janus issued his Decision in the above-entitled Case 1-CB-1460 (1-2), finding that the Respondent had not engaged in certain unfair labor practices within the

¹ Herein called the Union or the Respondent.

meaning of the National Labor Relations Act, as amended, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The Respondent filed an answering brief.

On July 3, 1969, the General Counsel filed a motion with the Board to reopen the record in Case 1-CB-1460 (1-2), alleging that the Union had undertaken to implement its threat to fine the Charging Parties, which the Trial Examiner found was not violative of the Act, by filing formal charges against Radziewicz and Kimball for crossing its picket line at their place of employment at International Paper Box Machine Company (herein called the Company). The Respondent filed a brief in opposition to the General Counsel's motion. On October 22, 1969, the Board issued an Order granting the General Counsel's motion to reopen the record and remanded the proceeding to the Trial Examiner "... for the purpose of permitting the parties to present evidence of conduct occurring after the close of the hearing and bearing directly upon the conduct alleged in the complaint."

In the interim, on June 24 and September 3, 1969, charges were filed against the Union in Case 1-CB-1504(1-4) and Case 1-CB-1534, on the basis of which a consolidated complaint, with notice of hearing, was issued against the Union on October 20, 1969. The complaint alleged that the Union violated Section 8(b)(1)(A) of the Act by threatening to fine, imposing fines, and seeking judicial enforcement of such fines against certain named employees of the Company who had resigned from the Union and had returned to work during the Union's strike against the Company. On November 10, 1969, pursuant to motion made by

the General Counsel, the Trial Examiner consolidated all these cases and, on November 20, 1969, conducted a hearing in the entire consolidated proceeding.

On April 8, 1970, Trial Examiner Milton Janus issued his Supplemental Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom as set forth in the attached Trial Examiner's Supplemental Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Supplemental Decision and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations with the following modifications:

The Trial Examiner found, and we agree, that the Charging Parties, having effectively resigned from the Union before they crossed its picket line at their place of employment, were not subject to the Union's discipline for their postresignation conduct. The Trial Examiner therefore correctly concluded that the Union, by fining its former members, the Charging Parties herein, for conduct engaged in by them after

* The Respondent's request for oral argument is hereby denied as, in our opinion, the record, exceptions, and briefs adequately present the positions of the parties.

their resignations from the Union and by seeking judicial enforcement of such fines, violated Section 8(b) (1)(A) of the Act. In so finding, however, we rely upon the rationale more fully explicated in *The Boeing Company*,* which issued after the Trial Examiner's Supplemental Decision herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner's Supplemental Decision and hereby orders that the Respondent, Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Delete paragraph 1(a) of the Trial Examiner's Recommended Order and substitute the following:

"(a) Imposing fines, or seeking judicial enforcement of such fines, against former members for crossing its picket line at International Paper Box Machine Company after they had resigned from the Union."

2. Add the following new paragraph 2(b), and re-letter present paragraphs 2(b), (c), (d), (e), (f), and (g) as paragraphs 2(c), (d), (e), (f), (g), and (h), respectively:

* *Booster Lodge No. 106, International Association of Machinists and Aerospace Workers, AFL-CIO (The Boeing Company)*, 185 NLRB No. 23.

* We agree with the Trial Examiner that the matter of the reasonableness of the Union's fines is an immaterial consideration herein, *International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 504 (Arrow Development Co.)*, 185 NLRB No. 23.

"(b) Reimburse or refund to any employees named in Appendix A who may have paid fines under the circumstances described in paragraph 1(a) of the Order the amount, if any, of said fines plus interest thereon at the rate of 6 percent per annum."*

3. In footnote 8 of the Trial Examiner's Supplemental Decision, substitute "20" for "10" days.

4. Substitute the attached Appendix B for the Trial Examiner's Appendix B.

Dated, Washington, D.C.

(SEAL) EDWARD B. MILLER, *Chairman*

HOWARD JENKINS, Jr., *Member*

NATIONAL LABOR RELATIONS BOARD

Member BROWN, dissenting:

For reasons stated in my separate opinion in *Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO (The Boeing Company)*, 185 NLRB No. 23, I would find no violation of Section 8(b)(1)(A) of the Act in these cases and would dismiss the complaint in its entirety.

Dated, Washington, D.C.

GERALD A. BROWN, *Member*,

NATIONAL LABOR RELATIONS BOARD.

**Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO (The Boeing Company)*, *supra*, fn. 8.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD, AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT fine former members of this Union for crossing our picket lines at International Paper Box Machine Company after they have resigned from the Union, nor will we try to collect such fines by suing them in the courts.

WE WILL NOT restrain or coerce our former members in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind the fines we have imposed against the persons named below, change our records to show that we have rescinded these fines, and take all necessary action in the courts of New Hampshire to withdraw and give up all claims for collection of such fines.

Alonzo Bealand

Roger Bernier

Marcel Berube

Jean Boutin

Eugene Collard

Robert Depontbriand

Leonard Desjardins

Leo Dubois

Aurel Duval

Bernard Francis

Roger Gagne

Adrian Gagnon

Clovis Gamache

Robert Guerrette

Hazen Johnson

Maurice Kimball

Armand Levesque

Peter Makris

Paul Marquis

Ronald Maynard

William Mayo

Franklyn McAlister

Roland Michaud
John Nadeau
Felix Radziewicz
Emilien Riendeau

Robert Roy
Zennie Runowicz
Alfred Theriault
Henry Tremblay
Gerald Tyler

WE WILL reimburse the above nonmembers for any fines they may have paid to us for working behind our picket line at International Paper Box Machine Company plus interest at the rate of 6 percent per annum.

GRANITE STATE JOINT BOARD, TEXTILE
WORKERS UNION OF AMERICA, LOCAL 1029,
AFL-CIO

(Labor Organization)

Dated _____ (Representative) _____ (By) _____ (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 20th Floor John F. Kennedy Federal Building, Cambridge & New Sudbury Streets, Boston, Massachusetts 02203, Telephone 617-223-3330.

United States of America

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

Washington, D.C.

Case No. 1-CB-1460-1-2

**GRANITE STATE JOINT BOARD, TEXTILE WORKERS
UNION OF AMERICA, LOCAL 1029, AFL-CIO (INTER-
NATIONAL PAPER BOX MACHINE COMPANY)**

and

FELIX RADZIEWICZ, MAURICE K. KIMBALL, II,

INDIVIDUALS

Thomas P. Kennedy, Esq., for the General Counsel.

**Harold B. Roitman, Esq., Boston, Mass., for Re-
spondent.**

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MILTON JANUS, Trial Examiner: Charges were filed by Felix Radziewicz and Maurice K. Kimball II, on December 9, 1968, against Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, referred to hereafter as the Respondent or the Union. A complaint based thereon was issued by the Regional Director for Region 1 on January 29, 1969, and an amendment thereto on February 12. The

complaint, as amended, alleges that the Union violated Section 8(b)(1)(A) of the Act by threatening employees of International Paper Box Machine Company, who were claiming to be no longer members of the Union with excessive fines if they failed to support its strike against the Company and/or attempted to resign from the Union, and by threatening employees with bodily harm and property damage if they failed to support its strike.¹ Respondent's answer denies the material allegations of the complaint.

I conducted a hearing in this matter at Nashua, New Hampshire, on March 25, 1969. Briefs have been received from the General Counsel and the Union, and have been fully considered.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACTS

I. JURISDICTIONAL FACTS

International Paper Box Machine Company is a New Hampshire corporation with its principal place of business at Nashua, N.H., where it is engaged in the manufacture and sale of automatic paper box making and gluing machines. During a representative 12-month period preceding the issuance of this complaint, the Company received material valued in ex-

¹ The pertinent language of the statute reads as follows:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . .

cess of \$50,000 from points directly outside New Hampshire, and shipped products directly to points outside that State valued in excess of \$50,000. I find that the Company is an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Factual Background

The Union has represented the production and maintenance employees of the Company for more than 20 years. Pursuant to a strike vote, the employees went on strike September 20, 1968, over economic issues upon the expiration of the latest agreement. The strike was still current in late March 1969, when this hearing was held. Although the plant remained open, the only employees at work were supervisors, clerical, office and technical employees, and 3 or 4 employees in the bargaining unit who were not union members. About 160 employees remained on strike, honoring a token picket line which kept the main gate of the plant under surveillance.

The motion to strike the Company was voted on at a duly called meeting of union members the Saturday before expiration of the contract. Practically all the members were in attendance, and they assented to the strike by a standing vote, with only one member dissenting. The following Saturday, a day or two after the inception of the strike, another union meeting was

held to discuss organization and tactics. A rank-and-file member proposed a motion that anyone aiding or abetting the Company or its officials during the strike be subject to a \$2000 fine.* The motion was adopted unanimously without debate.

Radziewicz and Kimball decided independently in November that they would abandon the strike and return to work for the Company. Knowing of the Union's vote that members who aided the Company during the strike could be fined \$2000, each believed that he could avoid the possible effects of the fine motion by resigning from the Union. Radziewicz sent a letter of resignation to the Union on November 5, and Kimball on November 25. Within a day or so of the receipt of each resignation, Pitarys, manager of the Granite State Joint Board, sent each of them a letter, substantially identical, saying that he was surprised at the attempt to resign, that they were not familiar with the provisions and procedures they were required to adhere to when they chose to become members, and that they were still considered to be members in good standings, required to abide by the Union's rules and regulations. Further, Pitarys' letters went on to say, "In the event you have any thought that your action

* Two witnesses for the Respondent, Pitarys, a vice-president of the International Union and manager of the Granite State Joint Board, and Arel, who was recording secretary of Local 1029 in September 1968, testified that the motion as offered and adopted was to the effect that the fine be \$2000 or any amount determined by the Union. The official minutes of the meeting, kept by Arel, were not offered by Respondent. I note, moreover, that the letters of Pitarys to Radziewicz and Kimball mention only a \$2000 fine, referring neither to the possibility of a larger or a smaller fine. I shall consider, in my later discussion, that the amount of the fine which Radziewicz and Kimball thought the Union could impose on them was a flat \$2000.

removes you from your obligation as a union member, or that you have the right to cross the picket lines, let me caution you that you will be subject to a fine of \$2000 as per the unanimous action taken by the local union."

After getting the letter from Pitarys, Kimball spoke to a supervisor of the Company, and asked him if it was true that the Union could fine him. The supervisor said he could not tell him what the Union could do, and Kimball then made no attempt to return to work for the Company. Radziewicz did go back to work secretly for the Company for 3 days around Thanksgiving, but after Pitarys called him by phone a number of times, and referred to his letter cautioning him about a \$2000 fine, Radziewicz decided not to work behind the picket line.* The Union has taken no action against Radziewicz or Kimball by way of charges or proceedings for the purpose of fining them or imposing any other type of discipline. It is clear that Kimball, at least, whatever his intentions might have been with respect to working behind the picket line when he attempted to resign, took no overt action about abandoning the strike.

The bargaining agreement which expired September 20, 1968, had provided that employees who were union members on its effective date 3 years earlier, or who joined the Union during its term, were to remain members in good standing. The agreement had also provided that the Company would deduct union dues

* Radziewicz also testified that Pitarys threatened him in one of these conversations that if he went back to the plant the next working day, the pickets would be watching for him, and that Pitarys would not be responsible for what might be done to him or to his car. Pitarys flatly denied making any threat of physical harm or damage to Radziewicz. I credit Pitarys.

and initiation fees from the wages of any employee who authorized it to do so in writing. Radziewicz had been a member of the Union since 1960, while Kimball had joined it in December 1967, some 7 months after his employment with the Company. Each had signified his intention to join by signing an application for membership which included an authorization to the Company to deduct his initiation fees and dues. The combined application for membership and check-off authorization read as follows:

I, the undersigned hereby accept membership in Textile Workers' Union of America, AFL-CIO, and do hereby authorize and direct

INTERNATIONAL PAPER BOX MACHINE COMPANY, NASHUA which is my employer, to deduct from my wages the membership dues including initiation fees, in the amount fixed pursuant to the Constitution and the By-Laws of my Local Union and to pay over same to the Union or its designated agent pursuant to the provisions of any current or future collective agreement.

This authorization shall remain in effect until revoked by me and shall be irrevocable for a period of one year from the date hereof or until the termination date of any applicable collective agreement, whichever occurs sooner; unless I revoke it by sending written notices to my Employer and the Local Union by registered mail, only during a period of ten days immediately succeeding the termination date of any applicable collective agreement or yearly period, it shall be automatically renewed as an irrevocable checkoff from year to year, until duly revoked as herein provided.

The combined application and dues check-off authorization card does not set out a procedure by which a union member may resign. It does, of course, permit revocation of the dues check-off authorization within the time periods specified in Sec. 302(c)(4) of the Labor Management Relations Act, as amended, but the language provides for no more than that—it is completely silent on when or if the Union will recognize a resignation as effective.* The authorization card thereby mirrors what the constitutions and by-laws of the Textile Workers Union of America, the Granite State Joint Board, and Local 1029 already provide for—that a member may not voluntarily withdraw from the Union except by leaving the industry, in which case he may obtain a withdrawal card. Death, presumably, provides the only other means of exit from the Union.

The Union also attempted to show that Kimball had in effect revoked his letter of resignation by accepting a Thanksgiving turkey from it after his letter to the Union. The evidence as to whether Kimball accepted one of the Union's turkeys is unclear, but even if he had, I would not consider it to be a meaningful retraction of his attempt to resign.

Analysis and Conclusions

The Supreme Court held in *N.L.R.B. v. Allis-Chalmers Manufacturing Company*, 388 U.S. 175, 87

* Under the maintenance of membership provision of the last expired agreement, a union member who had revoked his check-off authorization in a timely fashion, that is within the 10 day period following his anniversary of acquiring membership would still be obligated to remain a member in good standing for at least the remaining term of the agreement. Failure to retain good standing by payment of his union dues could result in his discharge at the Union's request of the Company, under Sec. 8(a)(8) of the Act.

S. Ct. 2001, that the Union in that case had not violated Sec. 8(b)(1)(A) of the Act by seeking judicial enforcement for a fine of \$100 imposed on a member who had engaged in strike-breaking activities. In *Scofield v. N.L.R.B.* — U.S. —, 89 S. Ct. 1154, (April 1, 1969) the Court held that a union rule imposing a ceiling on payments for incentive work was valid and could be enforced through collection of reasonable fines without violating Sec. 8(b)(1)(A).

The Court's opinions in these two cases were obviously intended to illuminate a broader area than that under direct consideration. A brief statement of the general principle involved is given in *Allis-Chalmers*, at 388 U.S. 195:

Thus this history of congressional action does not support a conclusion that the Taft-Hartley prohibitions against restraint or coercion of an employee to refrain from concerted activities included a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines. Rather, the contrary inference is more justified in light of the repeated refrain throughout the debates on Sec. 8(b)(1)(A) and other sections that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status.

There are as yet no decisions of the Board in which it has worked out the implications of *Allis-Chalmers* and *Scofield*. Specifically, among the unanswered questions are the two presented here: (1) is it critical, in determining whether a union has violated Sec. 8(b)(1)(A) that the amount of the fine is "unreasonable", and under what circumstances does it become unrea-

sonable; and (2) is it critical, for purposes of the same determination, that membership in the union was in some sense involuntary.

1. *Reasonableness of the fine.* It is clear from both *Allis-Chalmers* and *Scofield* that the Court considered the amount of the fines for which judicial enforcement was sought in those cases as reasonable. There are scattered references throughout the two opinions that the reasonableness of the fine, at least when judicial enforcement was sought, was a factor in deciding whether a violation would be found. But there are other parts of the two opinions where the absence of a reference to *reasonable* fines might lead one to conclude that the amount of the fine was beyond the scope of the Board's inquiry.⁵

However, since I assume that the Court did not knowingly refer to the reasonableness of a fine without intending it to have some significance, an attempt must be made to fit the concept into the context of the Court's actual holdings. It must again be noted, in preface, that the Court held the fines *as enforced by the state courts* in *Allis-Chalmers* and *Scofield* as reasonable, and that court enforcement of a fine is the final stage of a fine proceeding. The preliminary stages recognized by the opinions, through which a

⁵ E.g. *Allis-Chalmers v. N.L.R.B.*, 388 U.S. 175 at 191-192: "Cogent support of an interpretation of the body of Sec. 8(b) (1) (A) as not reaching the imposition of fines and attempts at court enforcement is the proviso to Sec. 8(b) (1) . . . At the very least it can be said that the proviso preserves the rights to unions to impose fines, as a lesser penalty than expulsion, and to impose fines which carry the explicit or implicit threat of expulsion for nonpayment." It would seem that if a union may expel a member for violation of a union rule without first fining him, then the amount of a fine for which expulsion may later be sought is immaterial.

union's fine motion may proceed, are as follows: (1) the *passage* of the motion in an approved manner, or the prior existence of a union rule with or without a prescribed penalty; (2) *notification* to a member of the union action or existing rule; (3) *imposition* of a fine in accordance with the procedure prescribed in the Landrum-Griffin Act;* and (4) *enforcement*, either judicially or through the union's own internal machinery.

Notification, meaning a cautionary announcement to strikebreakers that their offense might be punishable by a fine, is found by the Court in *Allis-Chalmers, supra*, at page 192, footnote 30, not to be an unfair labor practice at least under the proviso, if not under the body of Sec. 8(b)(1), primarily because no inference can be drawn from the notification that court enforcement would be the means of collection. It would thus seem that even a "threat" or "caution" of an unreasonably large fine to employees whom the Union believed to be ready to engage in strikebreaking would not be a violation, unless perhaps, court enforcement was also threatened. Although such a notification may be given before the imposition of a fine, it is only the latter which is, assuming the Union's compliance with Sec. 411(a)(5) of the Landrum-Griffin Act, efficacious. Until the prescribed procedure has been followed, a cautionary announcement to a possible offender that a fine may be imposed is not, it

* Pub. L. 86-257, 73 Stat. 522, 29 U.S.C. Sec. 411 et seq. Sec. 411(a)(5) reads: "Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues by such organization . . . unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

seems to me, any more an unfair labor practice than the fine motion itself. There is no hint in either of the Court's opinions that promulgation of a valid union rule and a prescribed penalty, even though "unreasonable", would constitute a violation of Sec. 8(b)(1) (A).

I need not therefore decide in this case whether the imposition of a \$2000 fine would have been unreasonable *per se*; whether the surrounding circumstances might affect a determination as to the reasonableness of a fine;^{*} or whether court enforcement of an imposed fine in such amount would be an unfair labor practice. I find here that the notification to the potential strikebreakers, Kimball and Radziewicz, of the Union's fine motion, of which they were already aware, and the explicit warning that they would be subject to a \$2000 fine was not an unfair labor practice. This does not, however, necessarily dispose of the case.

2. *The Resignations.* The General Counsel contends that a union's right to impose a reasonable fine on a member for failing to support its strike does not extend to a threat to fine an employee who has resigned his membership, without regard to the reasonableness of the fine. The main thrust of the Respondent's argument is that Kimball and Radziewicz could not resign when they attempted to do so, that they are still union members, and that the Board does not have the authority "to pass judgment on the

^{*} Such surrounding circumstances might be the duration of the strike and what the employee might have earned if he had gone back to work despite the imposition of the fine, as compared with the amount of the fine.

penalties a Union may impose on a member." * The Union argues, however, that if Kimball and Radziewicz had in fact resigned, and if the Pitarys letters were a threat, they were nevertheless not coercive within the meaning of Sec. 8(b)(1)(A) because the obligations of membership, no matter how severe, simply do not apply to nonmembers.

The Supreme Court's opinions in *Allis-Chalmers* and *Scofield* make occasional references to "full membership" but they appear to relate to the problem of an employee obligated under a union-security provision to become a union member who chooses not to assume the responsibilities of full membership but to satisfy his financial obligations by paying the equivalent of the initiation fee and the monthly dues. There is, however, a statement in *Scofield* which speaks more directly on the issue of a union's right to fine a member who seeks to resign. It reads as follows (89 S. Ct 1154 at 1158):

Under this dual approach, Sec. 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and *is reasonably enforced against union members who are free to leave the union and escape the rule.* (Underscoring not in original).

The quoted language does not refer to the conditions governing resignations, such as whether a member

* The quotation is from the Board's decision in the *Wisconsin Motors* case 145 NLRB 1097, 1104, enforced by the Supreme Court *sub nom. Scofield v. N.L.R.B. supra*.

must comply with internal union regulations as to their time and manner, or whether a resignation need be accepted at all if the union makes no provision for voluntary resignations while still employed in the industry.

There are, however, certain statutory and Board principles which are of help in determining the rights and obligations of unions toward employees who seek to resign their union membership. There is first, of course, the proviso to Sec. 8(b)(1)(A) which enjoins impairment of a union's right to prescribe its own rules as to the acquisition or retention of membership. There are also those Board cases which hold that a union violates Sec. 8(b)(2) if it seeks the discharge for nonpayment of dues of an employee who has resigned at a time when a union security, or maintenance of membership, clause was not in effect, or who has resigned at any time from a union which does not provide by its constitution or bylaws for any effective method of resignation.* These cases certainly hold that a Union cannot prevail against an otherwise valid charge of violating Sec. 8(b)(2) by invoking the proviso to Sec. 8(b)(1)(A). Even the *Paulling* case on which Respondent relies, (*N.L.R.B. v. International Union, Automobile Workers etc.*, 320 F. 2d.

* *Aeronautical Industrial District Lodge 751 etc. (The Boeing Company)* 173 NLRB No. 71; *Local Union No. 621, United Rubber etc. Workers, (Atlantic Research Corporation)* 167 NLRB No. 83, fn. 1; *International Union, United Automobile etc. Workers, (John I. Paulling, Inc.)* 142 NLRB 296; 137 NLRB 901, set aside in *N.L.R.B. v. International Union, etc.* 320 F. 2d 12 (C.A. 1); 130 NLRB 1035, *enfd N.L.R.B. v. International Union, etc.* 297 F. 2d 272, (C.A. 1); *Newspaper Guild of Buffalo, Local No. 26*, 118 NLRB 1471; *Marlin Rockwell Corporation*, 114 NLRB 553; *New Jersey Bell Telephone Company*, 106 NLRB 1322, *enfd* 215 F. 2d 835 (C.A. 2).

12), does not go so far as to hold that a union which provides no effective method of resignation may continue to treat employees who attempt to resign, as members thereafter. See the caveat in this opinion at 320 F. 2d 12, 15-16, "Needless to say, as we indicated in a prior opinion between these same parties; 'it may be that . . . there is a limit of reasonableness beyond which a union may not go' in structuring its internal regulations."

In the instant case, when Kimball and Radziewicz resigned, there was no contractual provision in effect which required them to remain members, nor did the union's constitution allow them any free period in which to revoke their membership. But the Union has not sought to affect their job security in any manner. It has, at most, threatened to take steps to impose a fine if they should cross its picket lines. There are, however, intimations in the pertinent cases that resignation from a union is a right protected by Sec. 7 of the Act, embodying a public policy to which the proviso of Sec. 8(b)(1)(A) must be subordinated.¹⁰

I am led to conclude from the cases cited in footnote 10 that Kimball and Radziewicz effectively resigned despite their "contract of membership" with the Union which forbade their resignations.

To return then to the basic question already posed: If Kimball and Radziewicz were no longer members of the Union when Pitarys sent them his warning letters, can the Union be said to have violated Sec. 8(b)(1) thereby? It can be said with a kind of blinkered logic that nonmembers cannot be coerced by a threat

¹⁰ *Marlin Rockwell Corporation*, 118 NLRB 553, 559-562; *Communications Workers of America v. N.L.R.B.* 215 F. 2d 835 at 838, (C: A. 2) enforcing *New Jersey Bell Telephone Company*, 106 NLRB 1322.

to impose a fine based on failure to fulfill the obligations due only of a member. It is true, however, only if the nonmember can divine what the Board and the courts may decide in his particular case years later. Faced with the immediate risk in having to decide what the Union might be able to do, it is not surprising that Kimball and Radziewicz decided to forego their Sec. 7 right to work during the strike rather than face the potential risk of a heavy fine.

However, the issue of whether the Pitarys letters were intimidating in fact is yet dependent on the primary issue of whether the letters constituted restraint or coercion within the meaning of Sec. 8(b)(1). If it is not restraint or coercion to caution members about a possible fine, it is certainly no more violative to caution nonmembers.

I have previously concluded that the Pitarys letters went no further, and accomplished no more than the fine motion did, and since a fine motion or other valid union rule against strikebreaking is not in itself a violation, further notification of its passage or existence either to members or nonmembers is also not a violation. The Union did not impose fines on Kimball or Radziewicz, in compliance with the procedures required by Sec. 411(a)(5) of the Landrum-Griffin Act, nor did it seek either internal or external enforcement of its valid fine motion. It is thus unnecessary for me to decide whether it is the imposition or the enforcement of an excessive fine which violates Sec. 8(b)(1). It is also beyond the scope of my inquiry whether \$2000 is a reasonable amount for a fine, or at what stage, either imposition or enforcement, it becomes unreasonable.

I shall recommend dismissal of the complaint in its entirety.

On the basis of the foregoing findings and analysis of the facts, I made the following:

Conclusions of Law

1. International Paper Box Machine Company is engaged in commerce and in activities affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

2. Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in any unfair labor practices as alleged in the complaint.

RECOMMENDED ORDER

It is hereby recommended that the complaint be dismissed in its entirety.

Dated at Washington, D.C.

MILTON JANUS,
Trial Examiner.

GRANITE STATE JOINT BOARD, LOCAL 1029 (INTL. PAPER
BOX MACHINE COMPANY) 1-CB-1460 (1-2)

Please attach this Supplemental TXD to the original Decision and Order issued on December 31, 1970.

187 NLRB No. 90.

United States of America
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS

Washington, D.C.
GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION
OF AMERICA, LOCAL 1029, AFL-CIO (INTERNATIONAL
PAPER BOX MACHINE COMPANY)

and
FELIX RADZIEWICZ, MAURICE K. KIMBALL, II,
INDIVIDUALS

Case No. 1-CB-1460(1-2)
and
PAUL R. MARQUIS, EUGENE COLLARD, HAZEN R. JOHN-
SON, PETER MAKRIS, SR., INDIVIDUALS

Case No. 1-CB-1504(1-4)
and
JOSEPH M. KERRIGAN, Esq., AN INDIVIDUAL

Case No. 1-CB-1534
Thomas P. Kennedy and Gerald P. Cobleigh, Esqs.,
for the General Counsel.
Harold B. Roitman, Esq., Boston, Mass., for Re-
spondent.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

MILTON JANUS, Trial Examiner: On June 4, 1969, I issued a Decision in Case No. 1-CB-1460(1-2) recommending dismissal of the complaint against the Respondent, Granite State Joint Board etc. (referred to hereafter as the Union). The reason for my recommendation of dismissal was that, in my opinion, the holdings of the Supreme Court in *Allis-Chalmers v. N.L.R.B.*, 388 U.S. 175, and in *Scofield v. N.L.R.B.*, 394 U.S. 423, required a finding that Section 8(b)(1)(A) was not violated by the Union's warning the charging parties, Radziewicz and Kimball, that they would be subject to fines if they engaged in strike-breaking. I also held in my Decision that Radziewicz and Kimball could resign from the Union at any time in the absence of provision in the Union's constitution or by-laws for resignation at specified intervals, and that the resignations they had submitted to the Union were effective.

The General Counsel filed exceptions to my Decision on June 26, 1969. Two days earlier, on June 24, charges had been filed against the Union in Case No. 1-CB-1504(1-4) by the individuals named in the caption, charging a violation of Section 8(b)(1)(A) by the Union's threats to fine them if they crossed the Union's picket line at the International Paper Box Machine Company plant where the Union was on strike.

On July 3, 1969, the General Counsel filed a Motion with the Board to reopen the record in Case No. 1-CB-1460(1-2), alleging that the Union had filed formal charges against Radziewicz and Kimball for

crossing its picket line at the Company's plant, thereby going beyond its previous warnings to them which I had found not to be violative of the Act.

On September 3, 1969, Peter Kerrigan, an attorney, filed a charge in Case No. 1-CB-1534 on behalf of 23 named individuals, employees of the Company, alleging that the Union had fined them for crossing its picket lines and had brought suit in a State court to collect the fines which it had imposed.

On October 20, 1969, the General Counsel ordered Case Nos. 1-CB-1504(1-4) and 1-CB-1534 consolidated for hearing, and issued his complaint in that consolidated proceeding alleging that the Union had violated Section 8(b)(1)(A) by threatening to impose fines, by fining and by seeking judicial enforcement of such fines against employees of the Company who had resigned from the Union and had returned to work during the Union's strike against the Company.

Two days later, on October 22, the Board granted the General Counsel's motion to reopen the record in Case No. 1-CB-1460(1-2) and remanded it to me to take evidence as to conduct which occurred after the close of the hearing in that case and which bore directly on the conduct alleged in that complaint. Thereafter, on October 24, the General Counsel filed a motion with me to consolidate the remanded case with the two cases which he had previously consolidated and on which he had issued a new complaint. I issued an Order granting the General Counsel's motion, on November 10, 1969, and reaffirmed it on November 14, after the Union's request for reconsideration. A hearing was thereafter held on the entire consolidated proceeding on November 20, 1969, at Nashua, New Hamp-

shire.¹ The Union filed a brief after the hearing which I have considered. I have also considered later communications from both the Union and the General Counsel advising me of certain recently issued Trial Examiner's Decisions supporting their respective positions.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

ADDITIONAL FINDINGS OF FACT

The essential facts here are not in dispute, and at the risk of some repetition, I will summarize what is already set out in my original Decision as a prelude to a description of the events which have taken place since then.

The last bargaining agreement between the Company and the Union expired September 20, 1968, and on that date the Union began an economic strike which was still in force on the date of the latest hearing, November 20, 1969. Almost the entire working force were members of the Union under a maintenance-of-membership provision in the last contract, and all of the Union members went out on strike. The strike vote had been unanimously adopted, and a motion to fine anyone who aided the employer during the strike in the amount of \$2000 was adopted at a Union meeting with only one dissenting vote.

Radziewicz and Kimball sent letters of resignation to the Union in November, 1968, and the Union quickly

¹ By arrangement at the hearing an exhibit number, G.C. 11, was reserved for later submission by Mr. Kerrigan, the attorney for the charging parties. It is now part of the official record of the case.

replied, advising them that their purported resignations were ineffective, that they were still members subject to the Union's rules, and cautioning them that they were subject to a fine of \$2000 if they insisted on going back to work during the strike. Kimball did not attempt to return to work, while Radziewicz, who had gone back to work for a few days, then decided not to continue working behind the picket lines.

On these facts, I held in my original Decision that neither the fine motion, passed by the membership at the inception of the strike, nor the Union's letter to Radziewicz and Kimball on receipt of their resignations constituted imposition of a fine within the meaning of Sec. 411(a)(5) of the Landrum-Griffin Act, 29 U.S.C. 401 et seq., and that it was therefore unnecessary for me to decide whether a \$2000 fine, if it had been imposed, would have been unreasonable. I went on to find that since the Union's constitution did not provide for voluntary resignations under any circumstances or at any particular time, Radziewicz and Kimball were free to resign whenever they chose. Resignation from a Union was, I found, a right protected by Sec. 7 of the Act.² I recommended dismissal of the complaint since I found no violation of Section 8(b)(1)(A) by the Union warning the two charging parties that they might be fined for crossing its picket line at the Company's plant.

What follows is a recital of the events occurring after June 4, 1969, the date of my Decision. As soon as the Company was notified of that Decision, it sent letters to all the striking employees (Respondent Exhibit 3) advising them that my Decision meant that

² My reason for considering the resignation problem at all was in connection with the arguments of both parties on whether a nonmember can be restrained or coerced by a threat to fine him.

employees who resigned from the Union could not be fined, and that they were therefore free to cross the picket line and return to work.

A few days later, the Union responded to the Company's invitation to the strikers to return to work with a letter (General Counsel Exhibit 2) to its members, warning them that the Supreme Court had upheld a Union's right to fine anyone engaged in strikebreaking, and that charges would be brought against anyone doing so. It urged them not to be misled by the Company.

Shortly before my Decision was issued, a third employee, Hazen Johnson, resigned. After the Decision, beginning on June 6, 1969, and for some months following, there were many more resignations, totalling 31 altogether. (Their names are listed in Appendix A.) After resigning, they returned to work for the Company, crossing the picket lines to do so. While they had been out on strike, many of these 31 had obligated themselves in a written statement to the Union, to reimburse it for the premiums which the Union would pay to keep their group insurance policies current. Many of them also accepted cash payments from the Union while they were striking.

After they returned to work, the Union sent each of the 31 a letter charging him with misconduct by crossing its picket line, and requesting him to appear at a hearing at a specified time to answer the charge. None of them appeared as requested. The Union then notified each of them that a hearing had been held, and that a fine had been imposed on him amounting to a day's pay for each day worked. Some time later, the Union sent each of them a letter informing him that it had not yet heard from him about

paying his fine, and threatening him with legal action to collect it. None of them paid the fine imposed, and the Union then filed a suit and writ of attachment against each in the New Hampshire state courts. The suits claim a specific amount due the Union as a result of the defendant's contract of membership in the Union and, where applicable, a second count based on its claim for moneys advanced on his behalf for insurance premiums. However, the amount claimed is in all cases greater than the specific sums alleged to be due and owing. For example, the action brought against Eugene Collard is for \$1400 in the first count, and \$195.14 in the second, while the total amount claimed is \$2000.

CONTENTIONS, ANALYSIS AND CONCLUSIONS

The General Counsel has already filed exceptions to my Decision in the original proceeding and stands by the contentions raised then, that the Union's letters to Radziewicz and Kimball after their resignations in November 1968, are threats to impose excessive fines and are in themselves violative of Section 8(b)(1) (A). As to the imposition of fines on the 31 charging parties now involved in the consolidated proceeding, and the suit for judicial enforcement of these fines, the General Counsel argues, in the alternative: (1) that the 31 all effectively resigned from the Union and that a threat to fine, or the imposition of a fine in any amount, on nonmembers of a Union is restraint or coercion of their Section 7 right not to remain a member; but assuming, however, that their resignations may have been ineffective for some reason, so that they were still members when the Union fined them, then in that event, the fine of a day's pay for each day worked is excessive, since its effect is to force them to

quit working for the Company. This latter argument is based on the General Counsel's contention, already made in the first proceeding, that the *Allis-Chalmers* and *Scofield* cases should be construed to mean that the imposition of an unreasonable or excessive fine is a violation of Section 8(b)(1)(A).

The Union's basic arguments, like that of the General Counsel, center on the resignations. It argues that some or all of the resignations were ineffective, but that even if the 31 employees did in fact resign, the obligations they assumed when they went on strike must be fulfilled, and if not fulfilled, the Union has a right to require satisfaction from them by the imposition and collection of fines.

First, as to the ineffectiveness of the resignations. The Union relies on the combined membership application and dues check-off authorization which each of the 31 agreed to (set out in my original Decision), arguing that the 10 day period after the expiration of the collective-bargaining agreement within which dues check-offs could be revoked was also intended as the allowable period for resignations from the Union. It makes the point that it has in fact accepted resignations during that interval despite the silence of its constitution or by-laws on the procedure or period for voluntary resignations. It argues from there that it did in fact provide a procedure and an allowable interval within which resignations could be made and accepted as effective. I find the argument unpersuasive. No employee could be expected to know from the combined membership application and authorization form that the method to be used for revoking his check-off authorization (sending a registered letter to his employer and to the Union) was also meant to provide a method of resigning from the Union.

An employee might well intend to remain a Union member but choose not to have his Union dues checked off by his employer, so that revocation of the authorization does not imply resignation from the Union. Also, an employee concerned about his right to resign would certainly expect to be bound by what the Union's basic charter says or does not say on the subject, and should not be required to guess at what the Union's intentions were from an ambiguously expressed form designed for other purposes altogether.

Other arguments advanced for the ineffectiveness of the resignations are also unpersuasive since they are based on the proposition that the procedures to be followed for resignation are the same as those to be followed for revocation of the dues check-off authorization. They relate to the fact that some of the resignations were not sent by registered mail or were sent by telegram. One resignation, that of employee Desjardins, was unsigned. In fact, however, his letter gives his name and clearly expresses his intent to resign. As for those employees who resigned by ordinary mail or by telegram, I find that their resignations became effective upon receipt of their communications to the Union since no other form of communication was obligatory.

The Union also points to actions taken by employees after their resignations, which it considers inconsistent with an intent to resign. Thus, one employee may have received a strike benefit payment from the Union in the week in which he resigned, while other employees are said to have received insurance benefits after resigning. In both cases, it appears that the benefits received accrued before the resignations and are therefore not inconsistent with an effective resignation.

Finally, the Union argues that it should not be compelled to accept or honor resignations from employees who did so to please the Company which had falsified the meaning of my original Decision in order to induce their resignations. I find nothing improper in the Company's letter of June 5, 1969 (Respondent Exhibit 3) which advised all employees that my Decision meant that they could resign voluntarily at any time in the absence of restrictions on that right imposed by the Union's constitution or by-laws. That is the fair import of what I said, and I see nothing coercive or false in the Company's passing on that information. If it induced employees to resign, it was because they freely decided to do so.

For all the foregoing reasons, and for the reasons given in my original Decision in more detail, I find that the 31 employees here involved effectively resigned from the Union during the strike.¹

Assuming *arguendo* that the resignations were effective, the Union argues that it nevertheless had the right to impose fines on the charging parties for working during the strike. It points out that they had joined the Union voluntarily, without the compulsion of a union-security provision in the bargaining agreement; and that in accepting membership voluntarily, they bound themselves to adhere to the course of action freely voted on by the Union's membership. Thus, the argument goes, although the charging parties may choose to withdraw from the Union, they may not thereby avoid their obligations to accept the decision of the membership and to continue supporting the strike. Each member was induced to strike by the mutual commitment of all the

¹ See the cases cited in footnote 9 of the original Decision.

other members to do the same, and by returning to work during the strike the charging parties have breached their agreement with their fellow members. Judicial enforcement of a fine imposed for breaking a strike, it is argued, is in harmony with the national labor policy of protecting the right to strike.

The logic of the Union's argument requires the conclusion that a resignation of a union member has only a prospective effect, so that decisions made by the Union before the resignation continue to bind the former member who now seeks to repudiate the collective decision he once accepted. It is an argument that cannot be lightly brushed aside, since it is based on the proposition common in the law, that one cannot escape one's freely accepted obligations when the going gets tough. However, for more compelling considerations I must reject the Union's argument.

Section 7 of the Act protects equally the right to engage, and the right not to engage, in concerted activities including strikes. The same Section also protects the right to resign from a union* just as it does the right to join one. When an employee joins a union he assumes both rights and obligations with respect to it. To say that his obligation (in this case, to stay out on strike) continues even after he has effectively resigned would postpone to some indefinite date beyond his control his right not to strike. Further, since their right to attend Union meetings, to vote and to influence the Union's future course of action as to the strike, ended with their resignations, I believe that

* *New Jersey Bell Telephone Company*, 106 NLRB 1322, 1324, *enfd sub nom. Communications Workers of America, CIO v. NLRB*, 215 F. 2d 835, (C.A. 2), and *Marlin Bookbelle Corporation*, 114 NLRB 553, 559-562.

their obligations to the Union to support the strike must end then too.*

This is not to say, however, that monetary obligations of a member to his union which are based on an express or implied contract between them, may not survive the member's resignation.* In the category of possible monetary obligations due the Union by the charging parties are the premiums for group insurance policies which the Union advanced on their behalf, and the strike benefits which they received while they remained on strike. The suits brought by the Union in the State courts clearly seek reimbursement for the insurance premiums and possibly also for the strike benefits. The question whether the charging parties are liable for these sums, and the determination of the actual amounts due are matters over which a state court would have jurisdiction since they are based on usual contract law principles, not involving interpretation of the National Labor Relations Act. However, any part of the sums sued for which are attributable to the fines imposed by the Union on the charging parties after their resignations is, in my opinion, not collectible through resort to the State courts, because the Union would thereby be in violation of Section 8(b)(1)(A) of the Act.

* *Scofield v. N.L.R.B.*, 394 U.S. 423 at 430. "Under this dual approach, Sec. 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." This seems to me to mean that a union member must be free to "escape the rule" totally, in its retrospective as well as its prospective effects.

* *Communications Workers of America, CIO, v. N.L.R.B.* 313 F. 2d 835, 838 (C.A. 2)

The remaining contentions which the Union makes can be disposed of briefly. First, it argues that the charging parties failed to exhaust their internal union remedies even to the extent of failing to appear at the Union trials in order to claim that they had effectively resigned. But exhaustion of internal remedies would only be required of Union members, whereas here all the charging parties had resigned before the Union filed charges against them. Consequently, they were under no obligation to explain or defend their resignations at a Union hearing.

Finally, the Union argues that the fines imposed, a day's pay for each day worked, were not unreasonable. I express no opinion on whether the reasonableness of a union fine determines the legality of its imposition on members, nor on whether the amounts sought here are in fact reasonable, since in my opinion, the Union's imposition of a fine in any amount on nonmembers and its attempt to seek judicial enforcement therefor, are violations of Section 8(b)(1)(A).

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with the Employer's activities described in Section I of my original Decision, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

As I have found that the Respondent has violated Section 8(b)(1)(A) of the Act, I will recommend that it cease and desist therefrom, and take certain

affirmative action designed to effectuate the policies of the Act.

Specifically, I will recommend that the Union rescind the fines it has imposed on the 31 persons named in Appendix A, change its records to reflect such rescission, take all necessary action, in the New Hampshire courts where it is seeking judicial enforcement of its suits against these 31 persons, to withdraw and give up its claims for the fines it has imposed, and notify the said 31 persons that it has done all the foregoing.

On the basis of the foregoing findings and analysis of the facts, I make the following additional:

CONCLUSIONS OF LAW

4. The Respondent has restrained and coerced the 31 persons named in Appendix A, all of whom had effectively resigned their memberships in the Respondent, in the exercise of their right to resign said memberships and of their right not to strike against their employer, by imposing fines on them through its internal procedures, and by seeking judicial enforcement of such fines.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in this consolidated case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) Fining or seeking judicial enforcement of fines against former members of the Union.

(b) In any like or related manner restraining or coercing its former members in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Rescind the fines imposed against the 31 persons named in Appendix A.

(b) Change all pertinent records to reflect the action taken to rescind such fines.

(c) Take all necessary action in the courts of the State of New Hampshire where judicial enforcement for collection of the fines imposed against the persons named in Appendix A has been brought, to withdraw and give up all claims for said fines.

(d) Notify the persons named in Appendix A that it has taken the actions which have been ordered above.

(e) Post in conspicuous places at its offices and meeting halls, and other places where notices to its members are customarily posted, copies of the attached notice marked Appendix B. Copies of said notice, on

In the event no exceptions are filed as provided by Section 10246 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided by Section 10248 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

forms provided by the Regional Director for Region 1, shall, after being duly signed by an authorized representative of Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material.

(f) Furnish the Regional Director signed copies of such notice marked Appendix B for posting by International Paper Box Machine Company, in places where notices to employees are customarily posted. Copies of said notices, on forms provided by the Regional Director shall, after being duly signed by an authorized representative of the Respondent, be returned forthwith to the Regional Director for disposition by him.

(g) Notify the Regional Director for Region 1, in writing, within 20 days from the date of receipt of this Supplemental Decision and Recommended Order what steps it has taken to comply herewith.*

Dated at Washington, D.C.

MILTON JANUS,
Trial Examiner.

* In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps Respondent has taken to comply herewith."

Appendix A

Alonso Beaudand	Armand Lovesque
Roger Bernier	Peter Makris
Marcel Berube	Paul Marquis
Jean Boutin	Ronald Maynard
Eugene Collard	William Mayo
Robert Deponthriand	Franklyn McAlister
Leonard Desjardins	Roland Michaud
Leo Dubois	John Nadeau
Afred Duval	Felix Radkiewicz
Bernard Francis	Emilien Riendeau
Roger Gagne	Robert Roy
Adrian Gagnon	Zennie Banowick
Olovis Gamache	Alfred Theriault
Robert Guerrette	Henry Tremblay
Hasen Johnson	Gerald Tyler
Maurice Kimball	

(cont)

...marked Appendix A, ...
 ...are filed as provided by ...
 ...of the ... and ... of the ...
 ...in ...
 ...to ...
 ...shall be ...
 ...by a ...
 ...in the ...
 ...ORDER OF THE NATIONAL LABOR
 ...BOARD ...
 ...JUDGMENT OF THE UNITED
 ...OF THE NATIONAL LABOR RELATION
 ...BOARD.

Appendix B

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS
BOARD

An Agency of the United States Government

WE WILL NOT fine former members of this Union for crossing our picket lines, nor will we try to collect such fines by suing them in the courts.

WE WILL NOT restrain or coerce our former members in the exercise of rights guaranteed to them by Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind the fines we have imposed against the persons named below, change our records to show that we have rescinded these fines, and take all necessary action in the courts of New Hampshire to withdraw and give up all claims for collection of such fines.

Alonso Bealand
Roger Bernier
Marcel Berube
Jean Boutin
Eugene Collard
Robert Depontbriand
Leonard Desjardins
Leo Dubois
Aurel Duval
Bernard Francis

Roger Gagne
Adrian Gagnon
Clovis Gamache
Robert Guerrette
Hazen Johnson
Maurice Kimball
Armand Levesque
Peter Makris
Paul Marquis
Ronald Maynard

William Mayo
 Franklyn McAlister
 Roland Michaud
 John Nadeau
 Felix Radziewicz
 Emilien Riendeau

Robert Roy
 Zennie Runowicz
 Alfred Theriault
 Henry Tremblay
 Gerald Tyler

GRANITE STATE JOINT BOARD, TEXTILE WORKERS UNION OF AMERICA, LOCAL 1029, AFL-CIO (Labor Organization)

Dated _____ **By** _____
 (Representative) (Title)

**This Is An Official Notice And Must Not Be Defaced
 By Anyone**

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 20th Floor John F. Kennedy Federal Building, Cambridge & New Sudbury Sts. Boston, Massachusetts 02203 (Tel. No. 617-223-3353).

APPENDIX D

United States of America

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 15-CB-779

BOOSTER LODGE No. 405, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

THE BOEING COMPANY

DECISION AND ORDER

On December 30, 1968, Trial Examiner Ramey Donovan issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom, and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel, the Charging Party, and the Respondent each filed exceptions to the Decision, together with supporting briefs. The Charging Party filed a reply brief. Subsequently, in response to an invitation of the Board, the Charging Party and the Respondent filed supplemental briefs. In response to the same invitation, statements of position were filed by the National Association of Manufacturers, and by the American Federation of Labor and Congress of Industrial

Organizations, joined by the International Brotherhood of Teamsters and the International Union, UAW, as *amici curiae*.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, the reply brief, the supplemental briefs, the statement of position *amici curiae*, and the entire record in the case. The Board adopts the Trial Examiner's findings of fact, but adopts his conclusions and recommendations only to the extent that they are consistent with the decision herein.

The essential facts of this case are not in dispute. Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter called IAM or the Union, and Boeing were parties to a collective-bargaining agreement effective from May 16, 1963 through September 15, 1965.¹ Upon the expiration of the contract, the Union commenced a lawful strike against Boeing at its Michoud plant in New Orleans, Louisiana, and at various other locations. The strike lasted 18 days. On October 2, 1965, a new contract was signed. The strikers returned to work on the following day. Both contracts contained maintenance-of-membership clauses, which required

¹ At the time of the execution of the 1963 agreement, Booster Lodge 405 was not in existence. Boeing's Michoud, Louisiana, plant was considered a "Remote Location" unit, identified with the "Primary Location" unit at Seattle-Renton, Washington. Production and maintenance employees in the Michoud unit were represented by Aeronautical Industrial District Lodge No. 751, IAM, AFL-CIO, Seattle, a signatory to the contract with Boeing. Booster Lodge 405 came into existence sometime later in 1963, but the contract was not modified to reflect this event.

new employees to notify both the Union and the Employer of their desire not to join the Union within 30 days of accepting employment.

During the strike period, some 143 employees of a unit of approximately 1900 production and maintenance workers crossed the picket line and reported for work. All had been members of the Union during the contract period. One group of strikebreaking employees, numbering some 24, made no attempt to resign from the Union. The remaining 119 strikebreaking employees submitted their voluntary resignations, in writing, to both the Union and the Employer.¹ Many resigned from membership prior to reporting for work during the strike. Others resigned during the course of the strike, but returned to work before submitting their resignations.² All resignations were submitted after the expiration of the original contract and before the signing of the new one. All were submitted prior to the imposition of discipline by the Union.

In late October or early November 1965, the Union notified all strikebreaking employees that charges had been preferred against them under the International

¹ The Union objects to the fact that notices of resignation were sent to District Lodge 751 rather than to Booster Lodge 405. However, since Booster Lodge 405 was not a party to the original contract, as explained in footnote 1 *supra*, it would appear that employees who notified District Lodge 751 were attempting to comply with contractual requirements. Moreover, District Lodge 751 notified Booster Lodge 405 of all resignations.

² Four-hundred-and-fifty dollar fines were imposed on 108 employees. Of these, 61 had resigned their union membership prior to reporting for work during the strike, and others resigned during the course of the strike. Reduced fines were imposed on 35 employees. The record as to the timing of their resignations is not clear.

Constitution for "Improper Conduct of a Member" in "accepting employment . . . in an establishment where a strike . . . exists." Employees were advised of the dates of their trials, which were to be held even in their absence, and of the availability of union-member counsel. Prior to the strike, the Union had not warned members about the possible imposition of disciplinary measures. However, the IAM constitution provides that members found guilty of misconduct after notice and a hearing are subject to "reprimand, fine, suspension, or expulsion from membership, or any lesser penalty or combination." The constitution sets no maximum dollar limitation on fines.

Fines were imposed on all strikebreaking employees, regardless of whether, or when, they had resigned from the Union. Employees who did not appear for trial were fined \$450, as were those who appeared and were found guilty. The fines of employees who appeared for trial, apologized, and pledged loyalty to the Union were reduced to 50 percent of strikebreaking earnings. The level of fines was set by the union membership. There is no indication of the method of computation. Strikebreaking employees earned between \$2.38 and \$3.63 per hour, or between \$95 and \$145 per 40-hour week. In some instances, earnings during the strike were supplemented by the inclusion of bonus or premium rates for weekends and overtime.

Reduced fines have been paid in some instances. Payments have averaged \$40. None of the \$450 fines have been paid. The Union has sent out written notices that the matter has been referred to an attorney for collection, that suit will be filed upon nonpayment of fines, and that reduced fines will be increased to \$450 in the event of nonpayment. The Union has filed suit against nine individual employees to collect the fines

(plus attorney's fees and interest). The outcome of the suits has not been determined.

A principal issue in this case is the legality of the Respondent's imposition of disciplinary fines upon individuals who had resigned from the Union before engaging in the conduct for which the discipline was imposed. The complaint alleges, and the Trial Examiner found, that the Respondent's action in fining employees in this category violated Section 8(b)(1)(A) of the Act. We agree with the Trial Examiner's conclusion.* However, as the Trial Examiner has not fully spelled out his reasoning in this regard, and in light of the views of our dissenting colleague, we believe that further explication of our reasoning is appropriate here.

Under Section 8(b)(1)(A) of the Act, it is an unfair labor practice for a labor organization to "restrain or coerce employees in the exercise of rights guaranteed in Section 7." Included among those rights is the right to refrain from engaging in any of the protected concerted activities enumerated at the beginning of Section 7.

The levy of a fine is calculated to force an individual both to pay money and to engage in particular conduct against his will. This is true regardless of the ultimate collectibility of the fine. A man who is held up at gunpoint is coerced whether or not the gun is loaded. As with the levy of a fine, the coercion lies in the calculated threat and, as has been held, the argument that the fines imposed were not collectible

The Trial Examiner's reference to a "compounded" violation of Section 8(b)(1)(A) perhaps implies that the violation is merely derivative. On the contrary, we find, as spelled out more fully herein, that the very imposition of a fine on non-members violates the Act, regardless of the amount of the fine.

in a court of law, even if accepted is besides the point." The imposition of a fine has immediate coercive consequences. Faced with the possibility of action against him, the employee may well be, for practical purposes, impelled to forego his statutory right not to honor the Union's picket line rather than risk involvement in a lawsuit whose outcome he cannot predict.⁶ Or, should he choose to take that risk, he will find it necessary to hire counsel whose services he ordinarily would not require.

The Board has long recognized that a fine is inherently coercive.⁷ Yet in situations where a union imposes disciplinary fines on its members the Board has held that the union does not violate section 8(b)(1)(A).⁸ The basis of the Board's holdings in these early fine cases was the proviso to Section 8(b)(1)(A), which exempts "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership" from the coverage of that section. Although a union's membership rules may well be coercive, their enactment is specifically protected by the Act. In *Minneapolis, supra*,

⁶ See *NLRB v. American Bakery and Confectionery Workers' Local Union 300*, 411 F.2d 1122, 1126, (C.A. 7), enfg. 167 NLRB 596.

⁷ We do not share the confidence of our dissenting colleague in the ability of the ordinary employee to evaluate the ultimate legal consequences of the union's act. Nor would we require him to attempt to do so.

⁸ See e.g. *Minneapolis Star & Tribune Co.*, 109 NLRB 727, 733.

⁹ *Ibid.* See also *Local 283, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO (Wisconsin Motor Corp.)*, 145 NLRB 1097; *Local 248 et al., United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO (Allis-Chalmers Mfg. Co.)* 149 NLRB 67.

The Board construed the levy of the fine as the prescription of a rule with respect to the retention of union membership, and held that the union's conduct, which was protected by the proviso, therefore did not violate Section 8(b)(1)(A).

In affirming the Board's conclusions in *Allis-Chalmers*, the Supreme Court held that the body of Section 8(b)(1)(A) was not intended to reach the conduct of a labor organization in imposing and enforcing a fine upon its members for crossing an authorized picket line.* Thus, the Court found it unnecessary to pass on the Board's holding that the proviso protected the union's conduct. Nevertheless, the basis of the Court's holding was the underlying relationship between the union and its members. Throughout the opinion, the Court emphasized the right of unions to regulate their own internal affairs. Reference was made to the "contract theory" of union membership. And, finally, the Court cited the proviso to Section 8(b)(1)(A) as offering "cogent support for an interpretation of the body of Section 8(b)(1)(A) as not reaching the imposition of fines and attempts at court enforcement."

The significance of the membership relationship is that it establishes the union's authority over its members. In joining a union, the individual member becomes a party to a contract-constitution. Without waiving his Section 7 right to refrain from concerted activities, he consents to the possible imposition of union discipline upon his exercise of that right." But

* *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175.

"The power to discipline recalcitrant members is essential to the union's self-preservation. This coercive power is protected by the proviso to Section 8(b)(1)(A).

the contract between the member and the union becomes a nullity upon his resignation. Both the member's duty of fidelity to the union and the union's corresponding right to discipline him for breach of that duty are extinguished.

In the case at bar, the Union's right to discipline employees terminated upon the employees' submission of their letters of resignation.¹¹ The attempted imposition of discipline for subsequent conduct was beyond the powers of the Union.¹² It was not consented to by the employees. Nor, in our view, was it protected by the proviso to the Act.

The holding in *Allis-Chalmers* was carefully restricted to the facts of that case. The Court expressly refused to pass on the legality of the imposition of a fine upon "limited members" of the union.¹³ It appears to us that in this reservation there was the implication that such a fine when levied against nonmembers

¹¹ The Union takes the position that voluntary resignation from its ranks is impossible of achievement because its constitution and bylaws set forth no procedure for such resignations. As this argument is contrary to long-standing Board precedent, we reject it here. See *Communications Workers of America, CIO (New Jersey Bell Tel. Co.)*, 106 NLRB 1322, enfd. 215 F.2d 835 (C.A. 2); *Local Union No. 621, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO (Atlantic Research Corp.)*, 167 NLRB 610; *District Lodge 751, International Association of Machinists & Aerospace Workers, AFL-CIO (Boeing Co.)*, 178 NLRB No. 71. Moreover, as indicated *infra*, the Supreme Court in the *Scotfield* case expressly sanctioned the strategy of leaving the union to avoid discipline.

¹² The Union's disciplinary authority was, as we hold, limited to conduct engaged in during the period of membership.

¹³ While the court did not specifically refer to the fining of nonmembers, the cited reservation indicates the relevance of the membership issue.

constitutes a form of restraint and coercion proscribed by Section 8(b)(1)(A). The decisions in two subsequent fine cases reinforce that implication.

In its recent *Scofield* opinion,¹⁴ the Supreme Court summarized its construction of Section 8(b)(1)(A) as follows:

[The section] leaves a union free to enforce a properly-adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule [Emphasis supplied.]

This suggests that the prohibitions of Section 8(b)(1)(A) encompass union rules which do not conform with the enumerated qualifications. Included in this latter category is a rule enforced against nonunion members. By observing that members could "leave the union and escape the rule," the Court seems to have envisaged the possibility that union members could, indeed, resign membership and avoid discipline.

In the *Shipbuilding Workers* case,¹⁵ the Supreme Court found unlawful a union's attempt to discipline members for filing charges with this Board before exhausting their intraunion remedies. The Court construed Section 8(b)(1)(A) as assuring a union freedom of self-regulation only "where its legitimate internal affairs are concerned." But the imposition of discipline upon nonmembers can hardly be deemed an internal affair.

¹⁴ *Scofield, et al. v. N.L.R.B.*, 394 U.S. 423.

¹⁵ *N.L.R.B. v. Marine & Shipbuilding Workers*, 391 U.S. 418.

Our dissenting colleague treats *Allis-Chalmers* as if it existed in a vacuum, overlooking subsequent decisions and the statutory provisions themselves. But to extend the *Allis-Chalmers* doctrine beyond the perimeters of the situation there involved is to emasculate the provisions of Section 8(b)(1)(A). Such a result can hardly have been intended by the Supreme Court. It should not be reached here. In the interplay between the statutory policy to prevent coercion of employees for exercising Section 7 rights on the one hand, and the policy to permit unions to guide their internal affairs and determine their membership qualifications on the other, the former must prevail where the membership relation which justifies the latter is terminated.

For the foregoing reasons, we find that the Respondent violated Section 8(b)(1)(A) of the Act by imposing disciplinary fines upon resigners from its ranks, for acts committed after their resignations. We shall order the Respondent to cease and desist from such conduct, including attempts to collect the illegal fines through court proceedings.

Also at issue in this case is the legality of the Respondent's imposition of disciplinary fines upon two other categories of strikebreaking employees, those who crossed the picket line without resigning from the union, and those whose resignations were submitted after the commencement of strikebreaking activities but prior to the initiation of disciplinary action against them. The legality of the imposition of discipline upon members for conduct engaged in during the period of membership is clear." Accordingly,

NLRB v. Allis-Chalmers Mfg. Co., *supra*. As a majority of the Board (Members Fanning, Brown, and Jenkins), would find that the legality of union fines does not depend on their

we find that the Respondent did not violate Section 8(b)(1)(A) by fining the nonresignees. Nor, in our opinion, does the Respondent's failure to exercise its disciplinary authority with respect to the second group until after the submission of their resignations affect the legality of its action. As the source of the Union's disciplinary authority lies in the contractual relationship between the organization and its members, it is to the rules of contract law that we turn in evaluating the Union's conduct. The provisions of a contract are enforceable, and a cause of action can be brought upon them, even after the expiration or termination of the agreement. The rights and duties created by an agreement are extinguished only prospectively by the termination thereof. Thus the termination of some employees' membership here did not affect the Union's subsequent assertion of rights which had accrued to the Union during their earlier period of membership, such as the right to discipline the employees for prior strikebreaking. The effect of these employees' resignations was only to extinguish the Union's future authority over them.

Accordingly, we further find that the Respondent did not violate Section 8(b)(1)(A) of the Act by fining former members for misconduct engaged in

reasonableness, the Board does not adopt the Trial Examiner's findings, conclusions and recommendations on that issue. See *Arrow Development Corp.*, 185 NLRB No. 22, issued this day. For the reasons stated in his dissenting opinion in the *Arrow* case, Chairman McCulloch would examine the amount of the fine to determine their reasonableness in those situations where the union's imposition thereof and threatened or actual court action to collect such fines would in all other respects be lawful. Where expulsion from membership is clearly the only available method of enforcement, he would consider the size of a fine irrelevant.

prior to their resignations from among its ranks. However, this conclusion does not legitimize the imposition of discipline for conduct engaged in after the resignations. We shall order the Respondent to cease and desist from such action, and to remit a pro-rata portion of the fine, so that what remains reflects only preresignation conduct.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Booster Lodge No. 405, International Association of Machinists and Aerospace Workers, AFL-CIO, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Restraining or coercing employees, who had resigned from and who were no longer members of the Union, in the exercise of their rights guaranteed in Section 7 of the Act, by imposing fines against such employees because of their post-resignation conduct in working at the Michoud plant during the September 1965, strike, or by threatening to seek or seeking court enforcement of such fines.

(b) In any like or related manner, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Reimburse or refund to any employees, described in paragraph 1(a) of this Order, who have paid fines under the circumstances described in that paragraph, the amount of said fines imposed because of post-resignation conduct in working at the plant.

(b) Post at its office and meeting hall and at the Michoud, Louisiana plant of the Boeing Company, if the Company is willing, copies of the attached notice, marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 15, shall, after being signed by an authorized representative, shall be posted at the aforementioned locations, in conspicuous places, including all places where notices to employees are customarily posted, and reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify said Regional Director, in writing, within 10 Days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that those portions of the complaint as to which no violation has been found be, and they hereby are, dismissed.

Dated, Washington, D.C.

(SEAL) JOHN H. FANNING, *Member.*

FRANK W. McCULLOUGH, *Member.*

HOWARD JENKINS, Jr., *Member.*

NATIONAL LABOR RELATIONS BOARD.

Member BROWN, concurring in part and dissenting in part:

I join with my colleagues in dismissing the allegations of the complaint with respect to the imposition of discipline upon members for conduct engaged in during their period of membership. However, I would

"In the event this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

also dismiss the remaining allegations concerning the imposition of fines upon purported resigners from the Union.

My colleagues' disposition of this question is predicated upon the premise that an employee, faced with the threat of a union fine, "may well be impelled to forego his statutory right not to honor the Union's picket line rather than risk involvement in a lawsuit whose outcome he cannot predict." But this is what *Allis-Chalmers* was all about. There, a union fine, or the threat of it, expressly designed to force employees to "forego [their] statutory right not to honor the Union's picket line" was nevertheless held not to violate Section 8(b)(1)(A) even though such a fine was collectible, or collected, in court. The Supreme Court reasoned that 8(b)(1)(A) was not intended to apply to this kind of coercion. If, as is the case here, a Union does not violate 8(b)(1)(A) by imposing or threatening to impose a collectible fine, it is difficult to see how a presumably un-collectible fine can be violative of that Section. Even if, as the majority reasons, the employee concerned may not be sufficiently knowledgeable to evaluate the Union's fine as "un-collectible," and thus feel completely free to cross the picket line with impunity, he is plainly no more coerced than the full-fledged member.

A further consideration, ignored by my colleagues, impels me to this view. Each of the employees involved here, and in all other situations of which I am aware, was a member of the Union in all senses of the word before the strike began. Thus the fealty owed by a member to his union in effect came into play when the strike was authorized and began, and a "resignation" at that point was already a disloyal action from the standpoint of the Union and his

fellow members. Moreover, I cannot conceive of a case arising where a union would "fine" someone who had never been its member at all. It is only because the employees here were, in the eyes of the Union, and pursuant to the Union's constitution and bylaws, still Union members, that the fines would have any impact at all upon them. In this respect, whether employees are still members of the Union for purposes of imposition of a Union fine, the proviso to 8(b)(1)(A), in express terms, applies to a union's rules for acquisition or retention of membership."

For all these reasons, I would find no violation of Section 8(b)(1)(A) of the Act in a Union's fining a nonmember or a purported nonmember.

Dated, Washington, D.C.

GERALD A. BROWN, *Member*

NATIONAL LABOR RELATIONS BOARD

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government.

WE WILL NOT restrain or coerce employees who had resigned from the Union and who, in the exercise of their rights guaranteed in Section 7 of the Act, worked at the Michoud plant during the September 1965 strike, by imposing fines or by threatening to seek or by seeking court enforcement of said fines as to such employees.

¹⁰ The cases cited by my colleagues in footnote 11 concern a Union's application of its membership rules to his job tenure, and thus are inapposite to the instant situation, where the rules pertain solely to another internal union matter.

WE WILL reimburse nonmembers abovementioned for any fines they may have paid to us for working during said strike.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed to them in Section 7 of the National Labor Relations Act.

BOOSTER LODGE No. 405, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO (Labor Organization)

Dated _____ **By** _____
(Representative) (Title)

This Is An Official Notice And Must Not Be Defaced By Anyone

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office T6024 Federal Building (Loyola) 701 Loyola Ave., New Orleans, La. 70113. Telephone 504-527-6361.

